DOCUMENT RESUME

ED 396 459 EA 027 754

TITLE	Nondiscrimination in Employment Practices in Education.
INSTITUTION	Office for Civil Rights (ED), Washington, DC.
REPORT NO	ED/OCR-91-18R
PUB DATE	Aug 91
NOTE	16p.
PUB TYPE	Legal/Legislative/Regulatory Materials (090)
EDRS PRICE	MF01/PC01 Plus Postage.
DESCRIPTORS	Civil Rights; *Civil Rights Legislation; *Compliance (Legal); Disability Discrimination; Elementary Secondary Education; Employment Practices; *Equal Opportunities (Jobs); Higher Education; Racial Discrimination; Sex Discrimination; Sex Fairness
IDENTIFIERS	*Civil Rights Act 1964 Title VI; Rehabilitation Act 1973 (Section 504)

ABSTRACT

The Office for Civil Rights (OCR), Department of Education, prepared this brochure for the general public and for education agencies and institutions that have programs or activities that receive Federal financial assistance. The brochure summarizes the requirements pertaining to employment practices contained in Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973. Title VI protects people from discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance; Title IX prohibits discrimination on the basis of sex in education programs or activities receiving Federal financial assistance; and Section 504 prohibits discrimination on the basis of handicap in programs or activities receiving Federal financial assistance. The brochure also outlines procedures for filing a discrimination complaint with OCR. A list of regional Civil Rights Offices is included. (LMI)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
☑ This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.
• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

ED 396 459

NONDISCRIMINATION IN EMPLOYMENT PRACTICES IN EDUCATION

BEST COPY AVAILABLE

Nondiscrimination in Employment Practices in Education

U.S. Department of Education
Office for Civil Rights
Washington, D.C. 20202-1328

August 1991

INTRODUCTION

The Office for Civil Rights, Department of Education, prepared this pamphlet for the general public and for education agencies and institutions that have programs or activities that receive Federal financial assistance. Among the education recipients of Federal funds are approximately 16,000 local education systems; 3,200 colleges and universities; 50 state education agencies, their subrecipients, and vocational rehabilitation agencies, and the education and vocational rehabilitation agencies of the District of Columbia and of all American territories and possessions. The pamphlet summarizes the requirements pertaining to employment practices contained in Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973.

Title VI protects people from discrimination on the basis of race, color, or national origin in any program, or activity receiving Federal financial assistance; Title IX prohibits discrimination on the basis of sex in education programs or activities receiving Federal financial assistance; and Section 504 prohibits discrimination on the basis of handicap in programs or activities receiving Federal financial assistance.

The Department of Education (ED), Office for Civil Rights (OCR), is responsible for enforcing Federal civil rights requirements in programs or activities that receive assistance from ED; however, with certain exceptions, OCR refers individual complaints of employment discrimination under Title VI and Title IX to the Equal Employment Opportunity Commission.

ED issued regulations for each of the above three statutes. Each regulation includes a description of requirements concerning employment practices. State or local laws that conflict with the employment provisions or any other provisions of these regulations cannot be used as an excuse for noncompliance.

This pamphlet summarizes the employment requirements of the ED civil rights regulations. For copies of the regulations or additional information, write or telephone the OCR regional office that serves your state or territory. Also contact the appropriate OCR regional office if you wish to file a discrimination complaint against a recipient education agency or institution, their subrecipients, or vocational rehabilitation agencies; or the education or vocational rehabilitation agencies of the District of Columbia or of the territories or possessions of the United States. The addresses and telephone numbers of the regional civil rights offices are included at the back of the pamphlet.

NONDISCRIMINATION IN EMPLOYMENT UNDER TITLE VI

Title VI of the Civil Rights Act of 1964 protects people from discrimination based on race, color, or national origin in employment and employment practices in programs or activities receiving Federal financial assistance, where the primary purpose of the Federal assistance is employment or where the discriminatory practice has an impact on program beneficiaries.

The ED regulation for Title VI forbids employment discrimination in two distinct situations. First, where the primary purpose of the Federal assistance is to provide employment, the recipient may not discriminate on the basis of race, color, or national origin against applicants for employment or employees in that program. For example, Title VI prohibits discrimination against applicants for or participants in "work-study" programs that receive Federal assistance.

Second, where the primary purpose of the Federal assistance is not to provide employment, discrimination against employees or applicants for employment is prohibited by Title VI when the discriminatory practice results in discrimination against the program beneficiaries, usually students.

The ED regulation for Title VI encompasses, but is not limited to, recruitment, advertising, employment, layoffs, firing, upgrading, demotions, transfers, rates of pay and other forms of compensation, and uses of facilities. The regulation applies to all employment decisions and actions made directly by ED recipients, as well as those made indirectly through contractual arrangements or other relationships with organizations such as employment agencies, labor unions, organizations providing or administering fringe benefits, and organizations providing training and apprenticeship programs.

The Civil Rights Act of 1964 also contains Title VII, which deals more comprehensively than Title VI with employment. Title VII is administered nationally by the Equal Employment Opportunity Commission (EEOC). Unlike Title VI, Title VII covers only employment discrimination, and includes employment by every kind of employer, not just recipients of Federal financial assistance. However, Title VII coverage is limited to employers of 15 employees or more. Under Government-wide procedures, OCR refers many employment complaints to EEOC for investigation and potential conciliation.

Also, unlike Title VI, Title VII's coverage includes religion and sex discrimination. Title VII prohibits discrimination on the basis of race, color, religion, sex, or national origin in employment. For additional information regarding Title VII, contact your local EEOC office.

NONDISCRIMINATION IN EMPLOYMENT UNDER TITLE IX

Title IX of the Education Amendments of 1972 protects people from discrimination on the basis of sex in employment and employment practices in education programs or activities receiving Federal financial assistance.

The prohibition on discrimination in employment in the ED regulation for Title IX encompasses, but is not limited to, recruitment, advertising, hiring, upgrading, tenure, firing, rates of pay, fringe benefits, leave for pregnancy and childbirth, and participation in employer-sponsored activities. The regulation applies to all employment decisions by ED recipients, whether made directly or indirectly through contractual arrangements with referral agencies, labor unions, organizations providing or administering fringe benefits, or others.

Selected requirements of the regulation are summarized below.

Compensation
Under Title IX, recipients of Federal financial assistance cannot establish or enforce policies that result in unequal compensation to employees on the basis of sex in jobs that require equal skill, effort, and responsibility, and that are performed under similar conditions.

Employment Tests
An employment test that screens out people on the basis of sex may not be used unless the test is shown to validly predict successful performance in the position in question, and alternative tests are shown to be unavailable.

Pre-employment Inquiries
The regulation makes a distinction between inquiries about marital status and inquiries about gender. Marital status inquiries are prohibited. Inquiries about gender are permissable when they are made equally for both sexes and are not used for discriminatory purposes. For example, it is permissible to ask the sex of applicants to develop "applicant flow data" to monitor equal employment opportunity.

Marital or Parental Status
Federal recipients, under Title IX, may not establish or enforce policies concerning the current or potential marital or parental status of employees or applicants. Also, recipients may not differentiate on the basis of sex over whether a person is the head of a household or the principal wage earner in a family.

Title IX requiries recipients to treat pregnancy and related conditions the same as other temporary disabilities. This includes the granting of leave, payment of disability income, accrual of seniority, and the provision of other benefits and services. For example, a pregnant woman must be given the same benefits and rights provided a man who temporarily leaves work due to a broken arm. However, if a temporary disability plan does not cover elective procedures, then an institution need not cover, for example, elective surgery.

Title IX neither requires nor prohibits an employer from providing or paying for any benefit or service, including the use of facilities, related to an abortion. The law does not permit a penalty to be imposed on any person because she is seeking or has received any benefit or service related to a legal abortion.

Sex as a Bona-fide Occupational Qualification
Recipients may engage in action otherwise prohibited by Title IX if sex is shown to be a bona-fide occupational qualification for a job. For example, recipients may consider an applicant's sex when hiring for a position in a locker room or toilet facility used only by one sex.

Religious Exemption
Under the Title IX regulation, an institution that is controlled by a religious organization is exempt from those sections of the regulation that are inconsistent with the religious tenets of the organization. Institutions may, under the religious exemption provision, fill certain employment positions on the basis

of sex, if this practice is consistent with the tenets of the institution's controlling religious organization. For example, some institutions, recognized by OCR as exempt from certain employment sections of the Title IX regulation, have hired male religious leaders to teach classes training future religious leaders.

NONDISCRIMINATION IN EMPLOYMENT UNDER SECTION 504

The Department of Education Section 504 regulation prohibits discrimination against qualified handicapped persons in all employment-related decisions and actions in federally assisted programs. The prohibition of discrimination in employment in the Section 504 regulation includes, but is not limited to, recruitment, hiring, promotion, award of tenure, layoff and rehiring, rates of pay, fringe benefits, leave, job assignment, training, and participation in employer-sponsored activities.

A qualified handicapped person is any individual with a handicap who, with reasonable accommodation, can perform the essential functions of a job. The employment prohibitions of the Section 504 regulation apply to decisions and actions made directly by recipients, as well as those made indirectly through contractual arrangements or other relationships with organizations such as employment agencies, labor unions, organizations providing or administering fringe benefits, and organizations providing training and apprenticeship programs.

Under the Section 504 regulation:

- Reasonable accommodation may include making facilities used by employees accessible to and usable by individuals with handicaps, job restructuring, modifying work schedules, acquiring new or modifying existing equipment, or providing a reader for a blind person or an interpreter for a deaf person.

- If a recipient can demonstrate that an accommodation would impose undue hardship on the operation of its program, it is not obligated to provide the accommodation.

- A recipient excused from providing an accommodation may not discriminate against a handicapped applicant or employee who is able and willing to make his or her own arrangements to provide the accommodation.

- Recipients are obligated to make reasonable accommodation only to the known mental and physical limitations of an otherwise qualified handicapped person.

Other selected requirements of the regulation are summarized below.

Employment Tests

Recipients may not use employment tests or criteria that screen out qualified handicapped persons unless the test scores or criteria are shown to be job related, and alternatives are shown to be unavailable. Recipients must select and administer tests to ensure that the results reflect the applicant's or employee's ability, job skills or other factors the test is designed to measure, rather than the person's impaired sensory, manual, or speaking skills, except where those skills are the factors the test is designed to measure.

Pre-employment Inquiries and Medical Examinations

Recipients may not make pre-employment inquiry as to whether an applicant is handicapped, or about the extent of a handicap, unless the recipient is taking: remedial action to correct the effects of past discrimination, voluntary action to overcome limited program participation by individuals with handicaps or affirmative employment action under Section 503 of

the Rehabilitation Act.* In each instance, the recipient must inform the applicant of the primary purpose and voluntary nature of the inquiry, and that the information provided will be kept confidential.

Recipients may, however, make pre-employment inquiry into an applicant's ability to perform job-related functions; and, after an employer has made a conditional offer of employment, a medical examination may be required, provided all entering employees are subjected to a medical examination and provided the results are not used in a discriminatory manner.

Alcoholics and Drug Addicts

The term "handicapped person" includes alcoholics and drug addicts when the person's condition substantially limits a major life activity. However, any individual whose current use of alcohol would prevent that person from performing the duties of a job or whose employment would constitute a direct threat to property or the safety of others would not be a "qualified handicapped person" entitled to the protection of Section 504.

The term "handicapped person" also does not include an individual who is currently engaging in illegal use of drugs. However, a person undergoing treatment for drug addiction could, if he or she is no longer using drugs, be considered a "handicapped person."

HOW TO FILE A DISCRIMINATION COMPLAINT WITH OCR

Anyone who believes that an educational institution that receives Federal financial assistance has discriminated against someone on the basis of race, color, national origin, sex, handicap, or age may file a complaint with OCR. The person or organization

* Section 503 requires Federal contractors to take affirmative action to hire, place, and advance qualified handicapped persons.

filing the complaint need not be a victim of the alleged discrimination, but may complain on behalf of another person or group.

A complaint must be filed within 180 calendar days of the date of the alleged discrimination, unless the time for filing is extended by OCR for good cause. Prior to filing a complaint with OCR against an institution, a potential complainant may want to find out about the institution's grievance process and use that process to have the complaint resolved. A complainant is not required by law to use the institutional grievance procedure before filing a complaint with OCR. If a complainant uses an institutional grievance process and also chooses to file the complaint with OCR, the complaint must be filed with OCR within 60 days after the last act of the institutional grievance process.

For further assistance in filing a complaint, contact the OCR regional office that serves the state in which the alleged discrimination occurred. A list of regional offices and states is provided at the end of this pamphlet.

U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
REGIONAL CIVIL RIGHTS OFFICES

REGION I

CONNECTICUT, MAINE, MASSACHUSETTS,
NEW HAMPSHIRE, RHODE ISLAND, VERMONT

Office for Civil Rights, Region I
U.S. Department of Education
J.W. McCormack Post Office and Courthouse
Room 222, 01-0061
(617) 223-9662; TDD (617) 223-9695

REGION II

NEW JERSEY, NEW YORK, PUERTO RICO,
VIRGIN ISLANDS

Office for Civil Rights, Region II
U.S. Department of Education
26 Federal Plaza
33rd Floor, Room 33-130, 02-1010
New York, NY 10278-0082
(212) 264-4633; TDD (212) 264-9464

REGION III

DELAWARE, DISTRICT OF COLUMBIA,
MARYLAND, PENNSYLVANIA, VIRGINIA,
WEST VIRGINIA

Office for Civil Rights, Region III
U.S. Department of Education
3535 Market Street, Room 6300, 03-2010
Philadelphia, PA 19104-3326
(215) 596-6772; TDD (215) 596-6794

REGION IV

ALABAMA, FLORIDA, GEORGIA, NORTH CAROLINA, SOUTH CAROLINA, TENNESSEE

Office for Civil Rights, Region IV
U.S. Department of Education
Post Office Box 2048, 04-3010
Atlanta, GA 30301-2048
(404) 331-2954; TDD (404) 331-7816

REGION V

ILLINOIS, INDIANA, MICHIGAN, MINNESOTA, OHIO, WISCONSIN

Office for Civil Rights, Region V
U.S. Department of Education
401 South State Street, Room 700C, 05-4010
Chicago, IL 60605-1202
(312) 886-3456; TDD (312) 353-2541

REGION VI

ARKANSAS, LOUISIANA, MISSISSIPPI, OKLAHOMA, TEXAS

Office for Civil Rights, Region VI
U.S. Department of Education
1200 Main Tower Building, Suite 2260, 06-5010
Dallas, TX 75202-9998
(214) 767-3959; TDD (214) 767-3639

REGION VII

IOWA, KANSAS, KENTUCKY, MISSOURI, NEBRASKA

Office for Civil Rights, Region VII
U.S. Department of Education
10220 North Executive Hill Boulevard, 8th Floor
Kansas City, MO 64153-1367
(816) 891-8026; TDD (816) 374-6461

REGION VIII

ARIZONA, COLORADO, MONTANA, NEW MEXICO, NORTH DAKOTA, SOUTH DAKOTA, UTAH, WYOMING

Office for Civil Rights, Region VIII
U.S. Department of Education
Federal Building, Suite 310, 08-7010
Denver, CO 80204-3582
(303) 844-5695; TDD (303) 844-3417

REGION IX

CALIFORNIA

Office for Civil Rights, Region IX
U.S. Department of Education
Old Federal Building
50 United Nations Plaza, Room 239, 09-8010
San Francisco, CA 94102-4102
(415) 556-7000; TDD (415) 556-6806

REGION X

ALASKA, HAWAII, IDAHO, NEVADA, OREGON, WASHINGTON, AMERICAN SAMOA, GUAM, TRUST TERRITORY OF THE PACIFIC ISLANDS

Office for Civil Rights, Region X
U.S. Department of Education
915 Second Avenue, Room 3310, 10-9010
Seattle, WA 98174-1099
(206) 553-6811; TDD (206) 553-4542

U.S. DEPARTMENT
OF EDUCATION

OFFICE FOR CIVIL RIGHTS